

CITY OF NEWPORT BEACH
Planning Commission Minutes
 March 3, 2011
 Regular Meeting – 6:30 p.m.

ROLL CALL: Commissioners Eaton, Unsworth, Hawkins, McDaniel, and Hillgren – present. Commissioners Toerge and Ameri – excused.		
STAFF PRESENT: James Campbell, Acting Planning Director Patrick Alford, Planning Manager Leonie Mulvihill, Assistant City Attorney Tony Brine, City Traffic Engineer Kay Sims, Assistant Planner Jaime Murillo, Associate Planner Melinda Whelan, Assistant Planner Makana Nova, Assistant Planner Marlene Burns, Administrative Assistant		
POSTING OF THE AGENDA: The Planning Commission Agenda was posted on February 25, 2011.		
PUBLIC COMMENTS:		None
REQUEST FOR CONTINUANCES:		None
* * *		
CONSENT ITEMS		
SUBJECT: MINUTES of the regular meeting of February 17, 2011. Motion made by Commissioner Hawkins and seconded by Commissioner Unsworth to continue the approval of the minutes. Motion carried with the following vote:		ITEM NO. 1 Approved
Ayes:	Eaton, Unsworth, Hawkins, McDaniel, and Hillgren	
Noes:	None	
Excused:	Ameri and Toerge	
* * *		
Chairperson McDaniel proposed that Item No. 2, General Plan Annual Progress Report (PA2007-195) be moved to be heard last. Motion made by Commissioner Hawkins and seconded by Commissioner Unsworth to reorder the agenda as requested. Motion carried with the following vote:		
Ayes:	Eaton, Unsworth, Hawkins, McDaniel, and Hillgren	
Noes:	None	
Excused:	Ameri and Toerge	
* * *		

PUBLIC HEARING ITEMS

SUBJECT: Jamboree Chevron – (PA2008-165)
1550 Jamboree Road

ITEM NO. 3
PA2008-165
Approved

The application consists of a conditional use permit to allow the following design and operation changes to an existing service station: demolition of three, unused service bays to increase the floor area of the existing convenience market; introduction of off-site beer and wine sales (Type 20); the addition of an automated car wash; removal of an existing office/storage building and trash enclosure; construction of a new trash enclosure; the addition of landscaping areas; and related interior and exterior improvements. The application also includes a modification or waiver of the landscaping standards of the Zoning Code to allow fewer trees and shrubs than required.

Kay Sims, Assistant Planner, gave a brief overview of the staff report with a PowerPoint presentation.

After discussion, the Commission identified and presented some questions that were resolved as follows:

- The landscaping plans are subject to review before the approval of the building permit.
- It is unknown if the Chevron service station had been owned by the Irvine Company.
- The location of the carwash and new office was agreeable.
- Alcohol sales are to be handled only by employees that were to be properly completed training requirements and be at least 21 years of age.

The Applicant, Architect Steve Dahlberg, needed clarification of Item No. 14 in the Conditions of Approval, initially requiring that all owners, managers and employees were required to undergo the training program for selling alcoholic beverages. The Commissioners agreed that the condition should only be applied employees at the 1550 Jamboree Road Chevron location.

The Commission asked some questions of the Applicant and were resolved as follows:

- The Irvine Company has accepted the design concept, the next step will be to have them review the working drawings to confirm the design concept and once that has been completed; it will result in their acceptance of the project.
- New handicapped walkway from Jamboree up to the building is necessary because the pedestrians and the Americans with Disabilities Act (ADA) has a grade that is required for the slope and is to be separated from the automotive traffic.

Public comment period was opened.

Comments were given by the following resident from the surrounding neighborhood:

Joyce Fay Barnes – 122 E. Bay Avenue

- Concerned with the alcohol sales and alcohol consumption at the Chevron Station.

Public comment period was closed.

Motion made by Commissioner Hawkins and seconded by Commissioner Unsworth, to adopt a resolution approving Use Permit No. UP2008-051 with the following modifications:

- Condition of Approval to be added and read as follows
"The final landscaping plan shall be subject to review and approval by the Planning Division prior to issuance of a building permit."
- Modify Condition of Approval No. 14 by deleting the word owners and read as follows: *"All, managers and employees selling alcoholic beverages shall undergo and successfully complete a certified training program in responsible methods and skills for selling alcoholic beverages. The certified program must meet the standards of the California Coordinating Council on Responsible Beverage Service or other certifying/licensing body, which the State may designate. The establishment shall comply with the requirements of this section within 180 days of the issuance of the certificate of occupancy. Records of each owner's, manager's and employee's successful completion of the required certified training program shall be maintained on the premises and shall be presented upon request by a representative of the City of Newport Beach."*

Motion carried with the following vote:

Ayes:	Eaton, Unsworth, Hawkins, McDaniel, and Hillgren
Noes:	None
Excused:	Ameri and Toerge

* * *

SUBJECT: Crow Burger Kitchen Appeal – (PA2010-155)
3107 Newport Boulevard

An appeal of the Zoning Administrator's approval of Minor Use Permit No. UP2010-036 allowing an eating and drinking establishment (food service with no late hours) with a covered patio and a Type 41 (On Sale Beer and Wine, Eating Place) Alcoholic Beverage Control (ABC) license.

Makana Nova, Assistant Planner, gave a brief overview of the staff report with a PowerPoint presentation and mentioned the following:

- This was a de novo hearing as a result of the appeal.
- It is the Planning Division's practice that when a new entitlement application is submitted, it is processed under the current code.

Commissioner Unsworth and Commissioner Hawkins filed an appeal and discussed the following issues:

- Under the prior Zoning Code, conditions imposed on the Landing required that any restaurant serving alcoholic beverages come back before the Planning Commission for a use permit.
- Questioning whether or not there should be outdoor service of alcoholic beverages and a gate from the patio to the public walkway.
- A 36 inch railing was an issue due to young adults going to the nearby grocery store coming from the beach and has the potential for making alcoholic beverages readily available as they may interact with patrons of the establishment.
- Open doors were an issue because of the added noise, and should only open when patrons go in and out.
- The potted trees and location of a bench area on the Landing property.

The Applicant, Steve Geary, addressed the questions from the Commissioners and the questions were resolved as follows:

ITEM NO. 4
PA2010-155
Approved

- The gate from the patio will be locked and only be used as a fire exit.
- The doors will be pocket doors and the opening will be just a few feet.
- Outside alcohol service, limited to beer and wine, is important to the overall feel of the restaurant.

Craig Oka of Architects Design Consortium, Architect for the project clarified the following:

- A sliding glass door would allow egress and ingress to and from the patio.
- Elimination of the gate if allowed by the Building and Fire Department
- Planters to be moved closer to the railings.
- Awning would mitigate noise on the patio.
- Agreeable to height of the patio wall of 60 inches rather than 36 inches.

Public comment period was opened.

Comments were given by the following persons:

Sean Whiskeman - Catellus Development Group

- Spoke regarding the opening of the shopping center.

Richard Luehrs – President of the Newport Beach Chamber of Commerce

- In support of outdoor dining facility, stated that crime statistics lowest in 40 years.

George Schroeder – 129 35th

Joyce Fay Barnes – 122 E. Bay Avenue

Joe Reiss – 30th Street

Richard Meyer – 1623 West Balboa

David S. – Seashore Drive

- Concerns of alcohol consumption by minors due to a small height of wall.
- Too many restaurants serving alcohol in the area.
- Patio area of concern with the noise from the restaurant, even after patrons leave.
- Alcohol related issues need to be kept in perspective.

Public comment period was closed.

Commissioner Hillgren was in support of the project as it had been consistent with the approvals given to others at the center. The location, not being on the corner or on the street was not an issue and therefore discouraged the outdoor barrier since the operator would not risk losing the alcohol license, and aesthetics would be compromised. In addition, he mentioned that the rest of the uses in the center are subject to the conditional use review as approved in the Development Agreement for the project.

City Attorney Leonie Mulvihill stated that all applications are processed under the current Zoning Code. Commissioner Hawkins disagreed in that he stated that the Landing use permit was processed under the old Zoning Code. Even when applying the new Zoning Code the use permit for the Landing did not include specification of the minor or conditional use permit and added that it could still be presented to the Planning Commission.

Motion made by Commissioner Hillgren and seconded by Commissioner Hawkins, to adopt a resolution denying the appeal and upholding and affirming the decision of the Zoning Administrator to approve Minor Use Permit No. UP2010-036, subject to the

<p>findings and conditions of approval included within the draft resolution with the following modifications:</p> <p>Public comment period was re-opened.</p> <p>Detective Bryan Moore addressed the following concerns:</p> <ul style="list-style-type: none"> • Patio barrier – Could not speak as to what the impact of the noise would be. Passing of alcohol to minors was not an issue as the area would be conditioned appropriately. • Beer and wine – People may become intoxicated but did not believe that it would be of concern. • Patio hours – Did not foresee an issue as the patio would close at 10:00 p.m., mitigating some noise. <p>Public comment period was closed.</p> <p>Commissioner Hawkins mentioned that the issue related to the outdoor patio had been addressed by Detective Moore.</p> <p>A substitute motion was proposed by Commissioner Hawkins that the appeal be affirmed as to the issue of the jurisdiction of the Zoning Administrator in the minor use permit.</p> <p>The maker of the motion declined the proposed substitute motion as the text did not need to appear in the motion; the substitute motion was subsequently withdrawn by the maker of the substitute motion.</p> <p>Chairperson McDaniel would have liked a higher wall; but found no issue as the beer and wine alcohol service on the patio issue had been resolved.</p> <p>Commissioner Unsworth noted that the land-use was at issue for approval and mentioned that the problem with inebriated minors could be mitigated if there were a demising wall along with the outdoor alcohol service.</p> <p>Commissioner Eaton noted his issue with the outdoor alcohol service on the patio, and would prefer that there be no alcohol service on the patio. He added that there was enough indoor seating to accommodate the alcohol service, exclusively indoors.</p> <p>Substitute Motion by Commissioner Hawkins and seconded by Commissioner Eaton, to approve as presented with the prohibition of alcohol service on the outdoor patio.</p> <p>Maker of the motion, Commissioner Hillgren, added to the substitute motion that the outdoor patio alcohol service conclude at 8:00 p.m., and the maker of the substitute motion, Commissioner Hawkins, and the second maker of the substitute motion, Commissioner Eaton, agreed.</p> <p>Motion carried with the following vote:</p>							
<table> <tr> <td>Ayes:</td><td>Eaton, Unsworth, McDaniel, and Hillgren</td></tr> <tr> <td>Noes:</td><td>Hawkins</td></tr> <tr> <td>Excused:</td><td>Ameri and Toerge</td></tr> </table>	Ayes:	Eaton, Unsworth, McDaniel, and Hillgren	Noes:	Hawkins	Excused:	Ameri and Toerge	
Ayes:	Eaton, Unsworth, McDaniel, and Hillgren						
Noes:	Hawkins						
Excused:	Ameri and Toerge						
<p>SUBJECT: Malarky's Irish Pub – (PA2010-172) 3011 Newport Boulevard</p> <p>The application consists of a conditional use permit request to expand an existing eating and drinking establishment and to allow for the use of off-site parking. The application also includes a request for a comprehensive sign program to allow more than three signs on a single-tenant building.</p>	<p>ITEM NO. 5 PA2010-172 Approved</p>						

Jaime Murillo, Associate Planner, gave a brief overview of the staff report and mentioned the following:

Staff was originally in support of the proposed project, including the expansion of the interior dining area. Staff believed that the Operator License would provide the Police Department with an effective tool to regulate the late hour operations; however, after receiving additional information from the Police Department, staff reconsidered the recommendation and recommended that the Planning Commission deny the interior dining room expansion and only approve the other dining area. Even with the requirement to secure an Operator License, negative impacts resulting from the large influx of patrons leaving the establishment and adjacent establishments cannot be prevented as they are outside the control of the Operator and on-site operations. Some of the negative impacts cited were as follows:

- Taxi cabs and cars blocking circulation upon closing.
- Jay walking as a result of patrons exiting the restaurant.
- Patrons loitering in the surrounding neighborhood and congregating in the late hours.

The Planning Commission discussed the following issues:

- Sprinkler requirements.
- Interior re-model without adding floor area.
- Hours of alcohol service.
- Indoor occupancy capacity of 166 versus 150 or less.
- Availability of limited food menu for patrons of the late night hours.

Applicant, Mario Marovic, gave a power point presentation and presented letters in support of Malarky's to the Commissioners. The following was discussed:

- Exterior and interior improvements to the building.
- Security is certified and on-site until 3:00 a.m.
- Would like the bathroom to be Americans with Disabilities Act (ADA) compliant.
- Fixed dining to attract sophisticated clientele.

Comments in support were provided by the following persons:

William R. (Bill) Hamilton – 3625 5th Avenue, Corona del Mar

Vincent Barbato – 4203 Seashore Drive, Newport Beach

Caren Lancona – 1900 West Oceanfront

John Baren

Doug Thomas – resident and former Newport Beach Vice and Intelligence employee.

Frank Kosi – 2824 Newport Boulevard

Frank Fasel – 208 ½ 29th Street

Cindy Farney – 1732 Orchard Drive

Boyd Mickley – 1732 Orchard Drive

Gregory Ozimec – 315 Canal Street

Leon Ellensperger – 3401 Finley Avenue

President Chambers of Commerce

Brett Del Valle – 1201 Estelle Lane

Gordon Barienbrock – 3000 W. Oceanfront

Brian Harrington – 930 W. Balboa Boulevard

Brenda Martin – 206 30th

Brent Ranek – 246 Lugonia Street
 Andy Falhetthi – 616 Seaward Road

A summary of comments in support were as follows:

- Higher quality of dining that would be afforded and attract an upscale crowd.
- Great new venue for events if re-modeled.
- Malarky's adding great value to the community.
- Upscale atmosphere would be an improvement; Police Department should have better response in getting problems addressed appropriately.

Greg Tonkovich – Applicant's Noise Consultant, 1021 Didrickson Way, Laguna Beach

- Presented his noise study and concluded that outdoor patio would not be an issue nor have an impact on the neighbors.

Comments in opposition were provided by the following persons:

Joyce Faye Barnes – 122 East Bay Avenue
 Van Elliot – 3417 Marcus Avenue
 George Schroeder – 129 35th
 Drew Wetherholt – Submitted photos of police calls of service, hit and runs.
 Cynthia Koller – West Newport
 Joe Reiss – 30th Street
 Ryan Clemett – 1604 Schaffer Street
 Mogan Dodgers – 207 30th Street
 Kathy Reiss – 30th Street

A summary of comments in opposition were as follows:

- There is an overconcentration of drinking establishments.
- There is one alcohol license per every thirty-eight residents in District 15, which has the highest crime rate in the City.
- There are fights and other objectionable behavior.
- Concerned with people being intoxicated and as a result being a nuisance in surrounding neighborhoods.

Applicant responded to photos stating that the incident with the hit and run was not a patron of Malarky's.

An additional general discussion ensued.

Motion made by Commissioner Hillgren and seconded by Commissioner Hawkins, to adopt a resolution approving Use Permit No. UP2010-039 and Comprehensive Sign Program with the addition of the following conditions to the resolution:

- *To limit the late-hour disturbances that the expanded dining area may create through increased occupancy, the occupancy load of the interior of the establishment has been limited to a maximum of 150 persons between the hours of 11:00 p.m. and 2:00 p.m.*
- *The operation of the establishment shall be reviewed by the Planning Commission one year from the date the certificate of occupancy is issued for the interior expansion to ensure the increased occupancy has not resulted in detrimental impacts. The Deputy Community Development Director may initiate a review earlier than one year if detrimental impacts are identified.*
- *Upon vesting of the rights authorized by this Conditional Use Permit No.*

<p><i>UP2010-039, all previous rights authorized under Use Permit No. 1792 shall terminate. The following conditions of approval shall supersede the conditions of approval included in Use Permit No. 1792 and Use Permit No. 1792 (amended).</i></p>		
<p>Motion carried with the following vote:</p>		
<p>Ayes: Noes: Excused:</p>	<p>McDaniel and Hillgren Eaton, Unsworth, and Hawkins Ameri and Toerge</p>	
<p>Motion made by Commissioner Eaton and seconded by Commissioner Hawkins, to approve the revised resolution denying the interior expansion and only approving the Conditional Use Permit for the outdoor dining patio and the Comprehensive Sign Program.</p>		
<p>Motion carried with the following vote:</p>		
<p>Ayes: Noes: Excused:</p>	<p>Unsworth Eaton, Hawkins, McDaniel, and Hillgren Ameri and Toerge</p>	
<p>A general discussion ensued to cap the occupancy during the late hour operations to be 120 occupants, based on the finding that it was less than one third than was initially proposed and the reduced number of occupants would be more manageable for the Police Department.</p> <p>Motion made by Commissioner Eaton and seconded by Commissioner Hawkins, to adopt a resolution approving Use Permit No. UP2010-039 and Comprehensive Sign Program with the addition of the following conditions to the resolution:</p> <ul style="list-style-type: none"> • <i>The operation of the establishment shall be reviewed by the Planning Commission one year from the date the certificate of occupancy is issued for the interior expansion to ensure the increased occupancy has not resulted in detrimental impacts. The Deputy Community Development Director may initiate a review earlier than one year if detrimental impacts are identified.</i> • <i>The interior occupant load of the establishment shall be limited to a maximum of 120 persons during the late-hour operations between the hours of 11:00 p.m. and 2:00 a.m.</i> • <i>Upon vesting of the rights authorized by this Conditional Use Permit No. UP2010-039, all previous rights authorized under Use Permit No. 1792 shall terminate. The following conditions of approval shall supersede the conditions of approval included in Use Permit No. 1792 and Use Permit No. 1792 (amended).</i> 		
<p>Motion carried with the following vote:</p>		
<p>Ayes: Noes: Excused:</p>	<p>Eaton, Unsworth, McDaniel, and Hillgren Hawkins Ameri and Toerge</p>	
<p>Motion made by Commissioner Unsworth and seconded by Commissioner Hawkins, to continue meeting.</p>		
<p>Motion carried with the following vote:</p>		
<p>Ayes: Noes: Excused:</p>	<p>Eaton, Unsworth, Hawkins, McDaniel, and Hillgren None Ameri and Toerge</p>	

<p>SUBJECT: General Plan Annual Progress Report – (PA2007-195)</p> <p>The application consists of a conditional use permit request to expand an existing eating and drinking establishment and to allow for the use of off-site parking. The application also includes a request for a comprehensive sign program to allow more than three signs on a single-tenant building.</p> <p>Melinda Whelan, Associate Planner, gave a brief overview of the staff report.</p> <p>The Planning Commission discussed the following:</p> <ul style="list-style-type: none">• Koll and Conexant project was placed on hold.• Affordability had expired on some units; the lost units are not added to the requirement.• Addition of Implementation Plan for the Local Coastal Plan to be certified is forthcoming. <p>The report was received and filed.</p>	<p>ITEM NO. 2 PA2007-195</p>
<p style="text-align: center;">* * *</p>	
<p>ADJOURNMENT: 12:06 a.m. MICHAEL TOERGE, SECRETARY CITY OF NEWPORT BEACH PLANNING COMMISSION</p>	